March 11, 2015

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeffrey Beard, Secretary
California Department of Corrections & Rehabilitation
Office of Legal Affairs, Agent for Service of Process
1515 "S" Street, Suite 314 South
Sacramento, CA 95811

Donald Mims, Correctional Plant Manager
California State Prison Solano
2100 Peabody Road
Vacaville, CA 95687

Anita Hightower, Facility Operator Contact
California Department of Corrections – Solano State Prison
P.O. Box 187016
Sacramento, CA 95818

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION
15 MAR 25 A10:50

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act**

Dear Mr. Beard, Mr. Mims and Ms. Hightower:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the California Department of Corrections & Rehabilitation's Solano State Prison facility located at 2100 Peabody Road, Vacaville, California, 95687 ("the Facility"). The WDID number for the Facility is 5 S48I004100. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including New Alamo Creek, Ulatis Creek, Cache Slough the Sacramento River, and the San Francisco Bay Delta. This letter is being sent to you as the responsible owners, officers, or operators of the Facility. Unless otherwise noted, the California Department of Corrections &

Rehabilitation, Jeffrey Beard, Donald Mims, and Anita Hightower shall hereinafter be collectively referred to as "Solano."

This letter addresses Solano's unlawful discharges of pollutants from the Facility to New Alamo Creek, which conveys that storm water through natural and constructed channels to Ulatis Creek, which then conveys that storm water into Cache Slough, which flows to the Sacramento River, which ultimately flows into the San Francisco Bay Delta. Solano is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Permit").[1] Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur. *See* 40 C.F.R. § 135.2.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, the California Department of Corrections & Rehabilitation, Jeffrey Beard, Donald Mims, and Anita Hightower are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against the California Department of Corrections & Rehabilitation, Jeffrey Beard, Donald Mims, and Anita Hightower under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Permit. These violations are described more fully below.

## I. Background.

### A. The Clean Water Act.

Under the Act, it is unlawful to discharge pollutants from a "point source" to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits "the discharge of any pollutant by any person . . ." except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The permit requirement extends to "[a]ny person who discharges or proposes to discharge pollutants. . . ." 40 C.F.R. § 122.30(a).

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[1] On April 1, 2014, the State Board reissued the Permit, continuing its mandate that industrial facilities implement the best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT") and, in addition, establishing numeric action levels mandating additional pollution control efforts. State Board Order 2014-0057-DWQ. The new permit, however, does not go into effect until July 1, 2015. Until that time, the current General remains in full force and effect.

The term "discharge of pollutants" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). "Navigable waters" means "the waters of the United States" and includes, for example, traditionally navigable waters and tributaries to such waters. U.S.C. § 1362(7); 33 C.F.R. § 328.333 (a)(1)-(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

CSPA is informed and believes, and thereupon alleges, that Solano has discharged, and continues to discharge, pollutants from the Facility to waters of the United States, through point sources, in violation of the terms of the Permit, every day that there has been or will be any measurable discharge of storm water from the Facility since at least April 6, 1992. Each discharge, on each separate day, is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Solano is subject to penalties for violations of the Act since February 17, 2010.

**B. Solano's Facility, Water Quality Standards, and EPA Benchmarks**

The Facility is located at 2100 Peabody Road in the city of Vacaville and discharges directly to New Alamo Creek, which conveys that storm water through natural and constructed channels to Ulatis Creek, which then conveys that storm water into Cache Slough, which flows into the Sacramento River, which ultimately flows into the San Francisco Bay Delta. The Facility falls under Standard Industrial Classification ("SIC") Code 3499 (Fabricated Metal Products) and 3272 (Concrete Products, Except Block and Brick). Solano submitted a Notice of Intent ("NOI") to discharge under the Permit in 1992. CSPA's investigations into the industrial activities at Solano's approximately 925-acre Facility indicate that the Facility is primarily used to house California State Prison inmates.

The Facility also includes areas devoted to industrial activities including, but not limited to, fabricated metal parts, and vehicle maintenance, activities which require the Facility to handle, store, manufacture and transport manufactured metal, vehicle, and related materials. Other industrial activities at the Facility include pre-cast operations, sewage grinding, and the use and storage of heavy machinery and motorized vehicles, including trucks used to haul materials to, from and within the Facility. Solano collects and discharges storm water from the Facility through at least eight (8) discharge points into New Alamo Creek, which conveys that storm water through natural and constructed channels to Ulatis Creek, which then conveys that storm water into Cache Slough, which flows into the Sacramento River, which ultimately flows into the San Francisco Bay Delta. New Alamo Creek, Ulatis Creek, Cache Slough, the

Sacramento River, and the San Francisco Bay Delta are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board ("Regional Board" or "Board") has established water quality standards for the Sacramento River and the Delta in the "The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin," generally referred to as the Basin Plan.[2] The beneficial uses of the Sacramento River and its tributaries, including New Alamo Creek, Ulatis Creek and Cache Slough, include, among others, water contact recreation, non-contact water recreation, municipal and domestic water supply, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." Basin Plan at II-1.00 – II-2.00. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of the Sacramento River for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the Sacramento River and its tributaries. It includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." For the Delta, the Basin Plan establishes water quality objectives for several metals, including (at a hardness of 40 mg/L): copper – 0.01 mg/L; iron – 0.3 mg/L; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table IIII-1. *Id.* at III-3.00. The Basin Plan also provides that "[t]he pH shall not be depressed below 6.5 nor raised above 8.5." *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses." *Id.* at III-5.00.

The Basin Plan also provides that "[a]t a minimum, [surface] water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs) specified in the following provisions of Title 22 of the California Code of Regulations, which are incorporated by reference into this plan: Tables 64431-A (Inorganic Chemicals) and 64431-B (Fluoride) of Section 64431, Table 64444-A (Organic Chemicals) of Section 64444, and Table 64449-A (Secondary Maximum Contaminant Levels ["SMCLs"]-Consumer Acceptance Limits) and 64449-B (Secondary Maximum Containment Levels-Ranges) of Section 64449. This incorporation-by-reference is prospective, including future changes to the incorporated provisions as the changes take effect. *Id.* at III-3.0. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: Aluminum – 1.0 mg/L. *Id.* Table 64431-A

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[2] *See* http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf.

provides an MCL for aluminum of 1.0 mg/L, Table 64449-A provides an SMCL for aluminum of 0.2 mg/L, for iron of 0.3 mg/L, and for zinc of 5.0 mg/L. The EPA has adopted a freshwater numeric water quality standard for zinc of 0.12 mg/L (Criteria Maximum Concentration – "CMC"). 65 Fed.Reg. 31712 (May 18, 2000) (California Toxics Rule). The EPA has also issued recommended water quality criterion MCLs, or Treatment Techniques, for Mercury - 0.002 mg/L; lead – 0.015 mg/L; Chromium – 0.1 mg/L; and, Copper – 1.3 mg/L.

The California Toxics Rule ("CTR"), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: Arsenic – 0.34 mg/L (maximum concentration); Chromium (III) – 0.550 mg/L (maximum concentration); Copper – 0.013 mg/L (maximum concentration); and Lead – 0.065 mg/L (maximum concentration).

The Regional Board has identified the waters of the Central Valley as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury.[3] Discharges of pollutants into a surface water body may be deemed a "contribution" to an exceedance of the CTR, an applicable water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the Permit was "subject to effluent limitations as to certain pollutants, including zinc, lead, copper, aluminum and lead" under the CTR).

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT").[4] Solano must analyze storm water samples for Total Suspended Solids (TSS), pH, Specific Conductance (SC), and Total Organic Carbon (TOC) or Oil and Grease (O&G). *See* Permit Section B(5)(c)(i). Solano must also test for Zinc (Zn), Nitrate + Nitrite (N+N), Iron (Fe), and Aluminum (Al). *See* Permit, Section B(5)(c)(i) - (iii) and at Table D, Sections E and AA. The following benchmarks have been established for pollutants discharged by Solano: Total Suspended Solids – 100 mg/L; pH – 6-9 mg/L; Iron – 1.0 mg/L; Nitrate + Nitrogen – 0.68 mg/L; Zinc – 0.117 mg/L; Aluminum – 0.75 mg/L; Oil & Grease – 15.0 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for Specific Conductance of 200 µmhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to: Magnesium – 0.0636 mg/L, Copper - 0.0636 mg/L, and Manganese – 1.0 mg/L.

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[3] *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml.

[4] The Benchmark Values can be found at: http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf, and http://cwea.org/p3s/documents/multi-sectorrev.pdf. (Last accessed on December 22, 2014).

## II. Solano's Violations of the Permit.

Based on its review of available public documents, CSPA is informed and believes that Solano is in ongoing violation of both the substantive and procedural requirements of the Clean Water Act, as discussed in detail below.

### A. Solano Has Discharged Storm Water Containing Pollutants in Violation of Effluent Limitation B(3), Discharge Prohibition A(2), and Receiving Water Limitations C(1) and C(2).

The Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. Permit, Section A(8). Conventional pollutants are Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand, and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the Permit provides: "Except as allowed in Special Conditions (D.1.) of this Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit." Special Conditions D(1) of the Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge. Discharge Prohibition A(2) provides: "Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

Receiving Water Limitation C(1) of the Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Solano has discharged and continues to discharge storm water at unacceptable levels of Total Suspended Solids, pH, Iron, Nitrate + Nitrogen, Zinc, Aluminum, and Oil & Grease in violation of the Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as

Attachment A.[5] Solano's Annual Reports and Sampling and Analysis Results confirm discharges of specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Effluent Limitation B(3), Discharge Prohibition A(2) and/or Receiving Water Limitations C(1) and C(2) of the Permit:

**1. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentration in Excess of Applicable EPA Benchmark Value.**

| Date | Discharge Point | Parameter | Concentration in Discharge | Benchmark Value |
|---|---|---|---|---|
| 12/08/10 | Site 7 | TSS | 120 mg/L | 100 mg/L |
| 1/23/12 | Site 3 | TSS | 103 mg/L | 100 mg/L |
| 1/23/12 | Site 4 | TSS | 118 mg/L | 100 mg/L |
| 1/23/12 | Site 7 | TSS | 714 mg/L | 100 mg/L |
| 1/23/12 | Site 8 | TSS | 241 mg/L | 100 mg/L |
| 3/31/12 | Site 7 | TSS | 140 mg/L | 100 mg/L |
| 11/21/12 | Site 2 – Alt | TSS | 174 mg/L | 100 mg/L |

**2. Discharge of Storm Water Containing pH at Concentration in Outside of Applicable EPA Benchmark Value and Basin Plan Water Quality Objective.**

| Date | Discharge Point | Parameter | Concentration in Discharge | EPA Benchmark Value/ Basin Plan Water Quality Objective |
|---|---|---|---|---|
| 11/21/12 | Site 3 | pH | 5.66 s.u. | 6.00 - 9.00 s.u.(EPA Benchmark)<br>6.50 - 8.50 s.u. (WQO) |

[5] Storm water is discharged from the Facility on dates that include but are not limited to, when 0.1 inches of rain falls.

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|---|---|---|---|---|
| 11/21/12 | Site 3 – Alt | pH | 5.65 s.u. | 6.00 - 9.00 s.u.(EPA Benchmark)<br>6.50 - 8.50 s.u. (WQO) |

**3. Discharge of Storm Water Containing Iron (Fe) at Concentration in Excess of Applicable EPA Benchmark Value, Basin Plan Water Quality Objective, and EPA California Toxics Rule.**

| Date | Discharge Point | Parameter | Concentration in Discharge | EPA Benchmark Value/ Basin Plan Water Quality Objective/ EPA California Toxics Rule |
|---|---|---|---|---|
| 12/08/10 | Site 1 | Fe | 2.3 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 12/08/10 | Site 2 | Fe | 5.3 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 12/08/10 | Site 3 | Fe | 6.6 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 12/08/10 | Site 4 | Fe | 6.9 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 12/08/10 | Site 5 | Fe | 5.6 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 12/08/10 | Site 6 | Fe | 6.7 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 12/08/10 | Site 7 | Fe | 25.0 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 12/08/10 | Site 8 | Fe | 2.7 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 1/23/12 | Site 1 | Fe | 3.44 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 1/23/12 | Site 2 | Fe | 2.77 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |

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|---|---|---|---|---|
| 1/23/12 | Site 3 | Fe | 9.95 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 1/23/12 | Site 4 | Fe | 7.65 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 1/23/12 | Site 5 | Fe | 1.93 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 1/23/12 | Site 6 | Fe | 2.47 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 1/23/12 | Site 7 | Fe | 37.8 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 1/23/12 | Site 8 | Fe | 14.4 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 3/31/12 | Site 1 | Fe | 3.27 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 3/31/12 | Site 2 | Fe | 2.02 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 3/31/12 | Site 3 | Fe | 1.89 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 3/31/12 | Site 4 | Fe | 0.818 mg/L | 0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 3/31/12 | Site 5 | Fe | 1.85 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 3/31/12 | Site 6 | Fe | 2.11 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 3/31/12 | Site 7 | Fe | 7.2 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 3/31/12 | Site 8 | Fe | 2.46 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 11/21/12 | Site 1 | Fe | 0.842 mg/L | 0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |

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|---|---|---|---|---|
| 11/21/12 | Site 2 | Fe | 1.82 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 11/21/12 | Site 3 | Fe | 2.52 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 11/21/12 | Site 2 – Alt | Fe | 26.3 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 11/21/12 | Site 3 – Alt | Fe | 3.01 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 2/8/14 | Site 1 | Fe | 4.3 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 2/8/14 | Site 2 | Fe | 3.5 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 2/8/14 | Site 3 | Fe | 15.0 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |
| 12/12/14 | Site 2 | Fe | 4.0 mg/L | 1.0 mg/L (EPA Benchmark)<br>0.3 mg/L (WQO)<br>0.3 mg/L (SMCL) |

**4. Discharge of Storm Water Containing Nitrate + Nitrite (N+N) at Concentration in Excess of Applicable EPA Benchmark Value.**

| Date | Discharge Point | Parameter | Concentration in Discharge | Benchmark Value |
|---|---|---|---|---|
| 12/8/10 | Site 1 | N+N | 1.4 mg/L | 0.68 mg/L |
| 12/8/10 | Site 3 | N+N | 3.2 mg/L | 0.68 mg/L |
| 12/8/10 | Site 4 | N+N | 3.6 mg/L | 0.68 mg/L |
| 12/8/10 | Site 5 | N+N | 2.1 mg/L | 0.68 mg/L |
| 12/8/10 | Site 6 | N+N | 2.2 mg/L | 0.68 mg/L |

| | | | | |
|---|---|---|---|---|
| 12/8/10 | Site 7 | N+N | 5.7 mg/L | 0.68 mg/L |
| 12/8/10 | Site 8 | N+N | 1.9 mg/L | 0.68 mg/L |
| 1/23/12 | Site 1 | N+N | 1.57 mg/L | 0.68 mg/L |
| 1/23/12 | Site 2 | N+N | 1.07 mg/L | 0.68 mg/L |
| 1/23/12 | Site 3 | N+N | 0.77 mg/L | 0.68 mg/L |
| 1/23/12 | Site 4 | N+N | 0.78 mg/L | 0.68 mg/L |
| 1/23/12 | Site 7 | N+N | 1.82 mg/L | 0.68 mg/L |
| 3/31/12 | Site 3 | N+N | 1.3 mg/L | 0.68 mg/L |
| 3/31/12 | Site 4 | N+N | 1.01 mg/L | 0.68 mg/L |
| 3/31/12 | Site 5 | N+N | 1.4 mg/L | 0.68 mg/L |
| 3/31/12 | Site 6 | N+N | 1.07 mg/L | 0.68 mg/L |
| 3/31/12 | Site 7 | N+N | 4.38 mg/L | 0.68 mg/L |
| 11/21/12 | Site 1 | N+N | 1.78 mg/L | 0.68 mg/L |
| 11/21/12 | Site 3 | N+N | 0.72 mg/L | 0.68 mg/L |
| 11/21/12 | Site 2 – Alt | N+N | 1.15 mg/L | 0.68 mg/L |
| 11/21/12 | Site 3 – Alt | N+N | 1.73 mg/L | 0.68 mg/L |
| 2/8/14 | Site 1 | N+N | 10.0 mg/L | 0.68 mg/L |
| 2/8/14 | Site 2 | N+N | 2.2 mg/L | 0.68 mg/L |

| | | | | |
|---|---|---|---|---|
| 2/8/14 | Site 3 | N+N | 9.5 mg/L | 0.68 mg/L |

**5. Discharge of Storm Water Containing Zinc (Zn) at Concentration in Excess of Applicable EPA Benchmark Value, Basin Plan Water Quality Objective, and EPA California Toxics Rule.**

| Date | Discharge Point | Parameter | Concentration in Discharge | EPA Benchmark Value/ Basin Plan Water Quality Objective/ EPA California Toxics Rule |
|---|---|---|---|---|
| 12/8/10 | Site 7 | Zn | 0.12 mg/L | 0.117 mg/L (EPA Benchmark)<br>0.1 mg/L (WQO)<br>0.12 mg/L (CMC) |
| 1/23/12 | Site 4 | Zn | 7.65 mg/L | 0.117 mg/L (EPA Benchmark)<br>0.1 mg/L (WQO)<br>0.12 mg/L (CMC) |
| 1/23/12 | Site 7 | Zn | 0.125 mg/L | 0.117 mg/L (EPA Benchmark)<br>0.1 mg/L (WQO)<br>0.12 mg/L (CMC) |
| 11/21/12 | Site 2 – Alt | Zn | 0.151 mg/L | 0.117 mg/L (EPA Benchmark)<br>0.1 mg/L (WQO)<br>0.12 mg/L (CMC) |

**6. Discharge of Storm Water Containing Aluminum (Al) at Concentration in Excess of Applicable EPA Benchmark Value, Basin Plan Water Quality Objective, and EPA California Toxics Rule.**

| Date | Discharge Point | Parameter | Concentration in Discharge | EPA Benchmark Value/ Basin Plan Water Quality Objective/ EPA California Toxics Rule |
|---|---|---|---|---|
| 12/08/10 | Site 1 | Al | 1.9 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 12/08/10 | Site 2 | Al | 4.8 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 12/08/10 | Site 3 | Al | 5.5 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |

| | | | | |
|---|---|---|---|---|
| 12/08/10 | Site 4 | Al | 6.1 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 12/08/10 | Site 5 | Al | 5.3 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 12/08/10 | Site 6 | Al | 6.2 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 12/08/10 | Site 7 | Al | 23.0 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 12/08/10 | Site 8 | Al | 2.5 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 1/23/12 | Site 1 | Al | 4.34 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 1/23/12 | Site 2 | Al | 2.9 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 1/23/12 | Site 3 | Al | 9.22 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 1/23/12 | Site 4 | Al | 7.53 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 1/23/12 | Site 5 | Al | 2.29 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 1/23/12 | Site 6 | Al | 2.97 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 1/23/12 | Site 7 | Al | 27.7 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 1/23/12 | Site 8 | Al | 11.5 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 3/31/12 | Site 1 | Al | 1.89 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 3/31/12 | Site 2 | Al | 1.51 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |

| | | | | |
|---|---|---|---|---|
| 3/31/12 | Site 3 | Al | 1.2 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 3/31/12 | Site 4 | Al | 0.543 mg/L | 0.2 mg/L (SMCL) |
| 3/31/12 | Site 5 | Al | 1.34 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 3/31/12 | Site 6 | Al | 1.42 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 3/31/12 | Site 7 | Al | 4.85 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 3/31/12 | Site 8 | Al | 1.78 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 11/21/12 | Site 1 | Al | 0.648 mg/L | 0.2 mg/L (SMCL) |
| 11/21/12 | Site 2 | Al | 1.5 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 11/21/12 | Site 3 | Al | 1.9 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 11/21/12 | Site 2 – Alt | Al | 14.9 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 11/21/12 | Site 3 – Alt | Al | 1.87 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 2/8/14 | Site 1 | Al | 3.9 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 2/8/14 | Site 2 | Al | 3.1 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |
| 2/8/14 | Site 3 | Al | 14.0 mg/L | 0.75 mg/L (EPA Benchmark)<br>1 mg/L (MCL)<br>0.2 mg/L (SMCL) |

**7. Discharge of Storm Water Containing Oil & Grease (O&G) at Concentration in Excess of Applicable EPA Benchmark Value.**

| Date | Discharge Point | Parameter | Concentration in Discharge | Benchmark Value |
|---|---|---|---|---|
| 3/31/12 | Site 2 | O&G | 17.6 mg/L | 15.0 mg/L |
| 3/31/12 | Site 3 | O&G | 17.1 mg/L | 15.0 mg/L |

**8. Discharge of Storm Water Containing Specific Conductance (SC) at Concentration in Excess of Proposed Benchmark.**

| Date | Discharge Point | Parameter | Concentration in Discharge | Benchmark Value |
|---|---|---|---|---|
| 12/8/10 | Site 1 | SC | 1300 µmhos/cm | 200 µmhos/cm |
| 12/8/10 | Site 2 | SC | 1300 µmhos/cm | 200 µmhos/cm |
| 1/23/12 | Site 1 | SC | 515 µmhos/cm | 200 µmhos/cm |
| 1/23/12 | Site 1 | SC | 222 µmhos/cm | 200 µmhos/cm |
| 3/31/12 | Site 1 | SC | 1500 µmhos/cm | 200 µmhos/cm |
| 3/31/12 | Site 2 | SC | 520 µmhos/cm | 200 µmhos/cm |
| 3/31/12 | Site 3 | SC | 240 µmhos/cm | 200 µmhos/cm |
| 3/31/12 | Site 4 | SC | 376 µmhos/cm | 200 µmhos/cm |
| 3/31/12 | Site 5 | SC | 237 µmhos/cm | 200 µmhos/cm |
| 3/31/12 | Site 7 | SC | 203 µmhos/cm | 200 µmhos/cm |
| 11/21/12 | Site 1 | SC | 241 µmhos/cm | 200 µmhos/cm |

| | | | | |
|---|---|---|---|---|
| 2/8/14 | Site 1 | SC | 430 µmhos/cm | 200 µmhos/cm |
| 2/8/14 | Site 3 | SC | 270 µmhos/cm | 200 µmhos/cm |

The above samples demonstrate violations of Effluent Limitation B(3). CSPA's investigations, including a review of Solano's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's Benchmark values and the State Board's proposed benchmark level for Specific Conductivity, indicate that Solano has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, pH, Iron, Nitrate + Nitrogen, Zinc, Aluminum, and Oil & Grease in violation of Effluent Limitation B(3) of the Permit. Solano was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, Solano is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

The above samples also establish violations of Receiving Water Limitation C(1) of the Permit, because such discharges adversely impact human health or the environment, and Discharge Prohibition A(2) because the discharges cause or threaten to cause pollution, contamination or nuisance. The above samples may also constitute violations of Receiving Water Limitation C(2) of the Permit, with respect to the discharge of parameters for which Solano has failed to undertake testing and which cause or contribute to an exceedance of applicable water quality standards, including CTR limits.

CSPA is informed and believes that Solano has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 17, 2010. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since February 17, 2010, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Solano has discharged storm water containing impermissible levels of Total Suspended Solids, pH, Iron, Nitrate + Nitrogen, Zinc, Aluminum, Oil & Grease in violation Effluent Limitation B(3), Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the Permit and the Act. Each violation in excess of receiving water limitations and discharge prohibitions is likewise a separate and distinct violation of the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Solano is subject to penalties for violations of the Permit and the Act since February 17, 2010.

**B. Solano Has Failed to Implement an Adequate Monitoring & Reporting Program.**

Section B of the Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Program by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled."

Section B(5)(c)(i) further requires that the samples shall be analyzed for Total Suspended Solids, pH, Specific Conductance, and Total Organic Carbon. Oil and Grease may be substituted for Total Organic Carbon. Section B(5)(c)(ii) of the Permit further requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Section B(10) of the Permit provides that "Facility operators shall explain how the Facility's monitoring program will satisfy the monitoring program objectives of [Permit] Section B.2."

Based on their investigations, CSPA is informed and believes that Solano has failed to develop and implement an adequate Monitoring & Reporting Program. As an initial matter, based on their review of publicly available documents, CSPA is informed and believes that Solano has failed to collect storm water samples during at least two qualifying storms events, as defined by the Permit, during four of the past five Wet Seasons. Second, based on its review of publicly available documents, CSPA is informed and believes that Solano has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the Permit during three of the past five Wet Seasons. Furthermore, Solano has also failed to employ adequate testing methods in violation of the Permit, and failed to report the detection limits used in its sampling.

Finally, based on its review of publicly available documents, CSPA is informed and believes that Solano has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility including: Magnesium – 0.0636 mg/L, Copper – 0.0636 mg/L, and Manganese – 1.0 mg/L, and pH – 6.0 -9.0 s.u.

Each of these failures constitutes a separate and ongoing violation of the Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Clean Water Act, Solano is subject to penalties for violations of the Permit and the Act since February 17, 2010. These violations are set forth in greater detail below.

**1. Solano Has Failed to Collect Qualifying Storm Water Samples At All Discharge Points During at Least Two Rain Events In Four of The Last Five Wet Seasons.**

Based on its review of publicly available documents, CSPA is informed and believes that Solano has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during four of the past five Wet Seasons, as required by the Permit. This is so, even though there were many qualifying storm events from which to sample (discussed further below).

In four of the past five Wet Seasons (2010-2011, 2011-2012, 2012-2013 and 2013-2014), Solano reported that the Facility sampled the first qualifying storm event of the season, when in fact it did not sample the first storm of the season during those four Wet Seasons. For example, Solano reported in its 2010-2011 Annual Report that it sampled the first qualifying storm event of the Wet Season on December 8, 2010. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2010-2011 Wet Season occurred as early as October 24, 2010, when 1.47" of rain fell on the Facility.

In addition, Solano reported in its 2012-2013 Annual Report that it only sampled from one qualifying storm event, even though there were numerous opportunities to sample such an event. Further, in that same Annual Report, the storm event that Solano did sample was not a qualifying storm event. Based on its review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on November 21, 2012 was not a qualifying storm event because it rained 0.52" at the Facility on the day before. Thus, the November 20, 2012 storm event rendered any storm occurring for three days afterwards non-qualifying.

Furthermore, based on its investigation, CSPA is informed and believes that Solano failed to sample storm water discharges from the Facility at all discharge points during the 2013-2014 Wet Season. Solano reported during the previous three wet seasons (2010-2011, 2011-2012, 2012-2013) that there were eight (8) discharge points at the facility. However, in the most recent Annual Report (2013-2014), Solano reported that only three (3) discharge points were sampled. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the Permit and the Act. Permit, Section B (5)(a).

**2. Solano Has Failed to Conduct the Monthly Wet Season Observations of Storm Water Discharges Required by the Permit.**

The Permit requires dischargers to "visually observe storm water discharges from one storm event per month during the Wet Season (October 1 – May 30)." Permit, Section B(4)(a). As evidenced by the entries on Form 4 Monthly Visual Observations contained in Solano's Annual Reports for three of the last five Wet Seasons (2011-2012, 2012-2013 and 2013-2014), CSPA is informed and believes that Solano has failed to comply with this requirement of the Permit.

Specifically, Solano failed to conduct monthly visual observations of discharges from qualifying storm events for all months during three of the past five Wet Seasons as required by the Permit. However, based on publicly available rainfall data, CSPA is informed and believes that there were many qualifying storm events during each of these Wet Seasons that Solano could have observed.

For example, Solano reported in its 2013-2014 Annual Report that it only conducted visual monitoring for the month of February. However, based on its investigation of publicly available rainfall data, CSPA is informed and believes there were many qualifying storm events during which Solano could have visually monitored the discharge from the Facility. *See* Attachment A. Solano's failure to conduct this required monthly Wet Season visual monitoring extends back to at least February 17, 2010, and has caused and continues to cause multiple, separate and ongoing violations of the Permit and the Act. Permit, Section B(4)(a).

**3. Solano's Failure to Employ Adequate Testing Methods in Violation of the Permit Since February 17, 2010.**

Additionally, Solano is in violation of the Permit's requirement that the testing method employed in laboratory analyses of pollutant concentrations present in storm water discharged from the Facility be "adequate to satisfy the objectives of the monitoring program." Permit Section B.10.a.iii. In every single annual report filed by Solano, the test methods employed by the laboratory utilized by Solano to analyze the concentration of the pollutants present in the storm water discharged from its Facility did not comply with these Regional Board requirements.

Specifically, the detection limits Solano applied over past four Wet Seasons have differed dramatically every year leading to inaccurate or unreliable sample results that failed to meet the standard set forth in Section B.10.a.iii. For example, the detection limit applied by Solano for iron in 2011, 2012 and 2014 was 0.04 mg/L, 11.5 mg/L and 0.1 mg/L, respectively. Furthermore, Solano failed completely to report the detection limits used in its storm water samples in its 2013 Annual Report in violation of Permit requirements for filing accurate and complete Annual Reports, discussed further below. These are just a few of many examples of Solano's failure to adequately test the presence and concentration of pollutants at their storm water discharge points.

Solano is in violation of the Permit for failing to employ laboratory test methods that are adequate to, among other things, "ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this Permit." Permit, Section B.2.a. ("Monitoring Program Objectives").

CSPA is informed and believes that publicly available documents demonstrate Solano's consistent and ongoing failure to implement an adequate Monitoring and Reporting Program in violation of Section B of the Permit. Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Solano is subject to penalties for these violations of the Permit and the Act since February 17, 2010.

**4. Solano's Failure to Analyze Storm Water Samples for All Required Constituents.**

In addition, CSPA is informed and believes that for four of the past five Wet Seasons, Solano has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility, including Magnesium – 0.0636 mg/L, Copper - 0.0636 mg/L, and Manganese – 1.0 mg/L. Each failure to sample for all required constituents is a separate and distinct violation of the Permit and Clean Water Act. Accordingly, Solano is subject to penalties for these violations of the Permit and the Act since February 17, 2010.

**C. Solano Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. Permit, Section A(8). CSPA's investigations, and the Facility's exceedances of EPA benchmarks explained above, indicate that Solano has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, pH, Iron, Nitrate + Nitrogen, Zinc, Aluminum, Oil & Grease and other unmonitored pollutants in violation of Effluent Limitation B(3) of the Permit.

To meet the BAT/BCT requirement of the Permit, Solano must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum Solano must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. Solano has failed to adequately implement such measures.

Solano was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Solano has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. Solano is subject to penalties for violations of the Permit and the Act occurring since February 17, 2010.

**D. Solano Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely

manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the Facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (Permit, Section A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (Permit, Section A(4)); a list of significant materials handled and stored at the site (Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Permit requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigations and reviews of publicly available documents regarding conditions at the Facility indicate that Solano has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Solano has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, Solano has been in continuous violation of Section A(1) and Provision E(2) of the Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. Solano is subject to penalties for violations of the Permit and the Act occurring since February 17, 2010.

### E. Solano Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing

to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP.

The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, Solano is discharging elevated levels of Total Suspended Solids, pH, Iron, Nitrate + Nitrogen, Zinc, Aluminum, and Oil & Grease and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, Solano was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, Solano was aware of high levels of these pollutants long before February 17, 2010. Solano has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the Permit every day since February 17, 2010, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Solano is subject to penalties for violations of the Permit and the Act occurring since February 17, 2010.

**F. Solano Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. Permit, Sections B(14), C(9), (10). Section A(9)(d) of the Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the Permit. *See also* Permit, Sections C(9) and (10) and B(14).

CSPA's investigations indicate that Solano has submitted incomplete Annual Reports and purported to comply with the Permit despite significant noncompliance at the Facility. For example, Solano reported in four Annual Reports filed for the past four Wet Seasons (i.e., 2010-2011, 2011-2012, 2012-2013 and 2013-2014) that it observed storm water discharges occurring during the first storm of those Wet Seasons. However, as discussed above, based on CSPA's review of publicly available rainfall data, CSPA believes this is incorrect.

Further, Solano failed to sample from qualifying storm events in four out of last five Wet Seasons in violation of the permit. For example, in the 2012-2013 Annual Report Solano reported that it sampled from a storm event on November 21, 2012. However, based on publicly

available rainfall data CSPA is informed and believes that it the storm that occurred at the Facility on November 21, 2014 was not a qualifying storm event because 0.52 inches of rain fell on the Facility on November 20, 2014. Thus, the November 20th storm event rendered any storm occurring for three days afterwards non-qualifying under the Permit.

These are but a few examples of how Solano has failed to file completely true and accurate reports. As indicated above, Solano has failed to comply with the Permit and the Act consistently for the past five years; therefore, Solano has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Solano submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past five years. Solano's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Solano is subject to penalties for violations of Section (C) of the Permit and the Act occurring since February 17, 2010.

## IV. Persons Responsible for the Violations.

CSPA puts California State Prison Solano, the California Department of Corrections & Rehabilitation, Jeffery Beard, Donald Mims and Anita Hightower on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Jeffery Beard, Donald Mims, and Anita Hightower on formal notice that it intends to include those persons in this action.

## V. Name and Address of Noticing Parties.

The name, address and telephone number of each of the noticing parties is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067

## VI. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

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Megan Truxillo
John J. Prager
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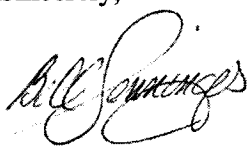
**VII. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects the California Department of Corrections & Rehabilitation, Jeffery Beard, Donald Mims, and Anita Hightower to a penalty of up to $37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against the California Department of Corrections & Rehabilitation, Jeffrey Beard, Donald Mims, and Anita Hightower for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

**SERVICE LIST**

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1200 Pennsylvania Avenue, N.W.
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Eric Holder
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Thomas Howard, Executive Director
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P.O. Box 100
Sacramento, CA 95812-0100

Pamela C. Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

**ATTACHMENT A**
**Notice of Intent to File Suit, City of Solano**
**Significant Rain Events,* March 11, 2010 – March 11, 2015**

April 1, 2010
April 5, 2010
April 11, 2010
April 12, 2010
April 20, 2010
April 21, 2010
October 6, 2010
October 19, 2010
October 29, 2010
October 30, 2010
November 7, 2010
November 19, 2010
November 20, 2010
November 21, 2010
November 23, 2010
December 5, 2010
December 17, 2010
December 18, 2010
December 19, 2010
December 20, 2010
December 21, 2010
December 22, 2010
December 25, 2010
December 29, 2010
January 2, 2011
January 30, 2011
February 16, 2011
February 18, 2011
February 19, 2011
February 25, 2011
March 2, 2011
March 18, 2011
March 19, 2011
March 20, 2011
March 23, 2011
March 24, 2011
March 26, 2011
April 7, 2011
May 16, 2011
May 17, 2011
June 4, 2011
June 5, 2011
June 6, 2011
October 4, 2011
October 5, 2011
November 6, 2011
November 11, 2011
November 20, 2011
December 12, 2011
January 21, 2012
January 23, 2012
February 7, 2012
February 13, 2012
March 17, 2012
March 18, 2012
March 25, 2012
March 31, 2012
April 10, 2012
April 11, 2012
April 12, 2012
April 13, 2012
April 25, 2012
October 22, 2012
November 17, 2012
November 30, 2012
December 1, 2012
December 2, 2012
December 12, 2012
December 15, 2012
December 17, 2012
December 22, 2012
December 23, 2012
December 24, 2012
December 25, 2012
December 26, 2012
December 29, 2012
January 5, 2013
January 6, 2013
January 24, 2013
January 25, 2013
February 8, 2013
February 19, 2013
February 20, 2013
March 7, 2013
March 31, 2013
November 20, 2013
November 29, 2013
December 7, 2013
February 2, 2014
February 6, 2014
February 26, 2014
February 27, 2014
February 28, 2014
March 1, 2014
March 2, 2014
March 26, 2014
March 31, 2014
April 1, 2014
October 31, 2014
November 1, 2014
December 2, 2014
December 3, 2014
December 11, 2014
December 12, 2014
December 15, 2014
December 16, 2014
December 17, 2014
December 19, 2014
February 6, 2015
February 8, 2015
February 9, 2015

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

INSPECTED 1

LAW OFFICES OF
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VIA CERTIFIED MAIL
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X-RAYED
MAR 17 2015
DOJ MAILROOM